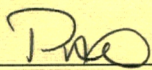
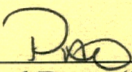


March 30, 2000

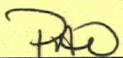
IN RE: DOCKET NO. 2000-040-C – E.SPIRE COMMUNICATIONS/BELLSOUTH  
ARBITRATION

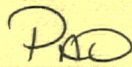
COPY OF **REBUTTAL TESTIMONY** OF JAMES C. FALVEY FILED ON BEHALF  
OF E.SPIRE HAS BEEN DISTRIBUTED TO:

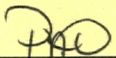
  
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Chief, McDaniel

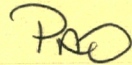
  
\_\_\_\_\_  
Legal Dept. (2)

  
\_\_\_\_\_  
Exec. Director

  
\_\_\_\_\_  
Manager, Utilities Dept.

  
\_\_\_\_\_  
Audit (1)

  
\_\_\_\_\_  
Research (1)

  
\_\_\_\_\_  
Commissioners (7)

pao

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March 29, 2000

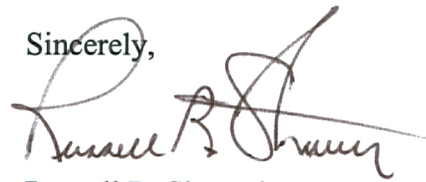
The Honorable Gary E. Walsh  
South Carolina Public Service Commission  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Docket No. 2000-40-C

Dear Mr. Walsh:

Enclosed is the original and twenty copies of the Rebuttal Testimony of James C. Falvey and Exhibits in the above referenced docket.

Sincerely,

  
Russell B. Shetterly

RBS/tpb

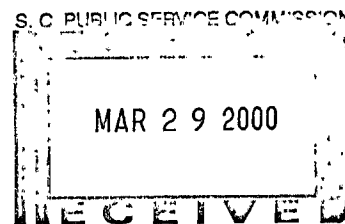
Enclosures



### CERTIFICATE OF SERVICE

I, Russell B. Shetterly, do hereby certify that I have, on this 29<sup>th</sup> day of March, 2000, caused James C. Falvey's Rebuttal Testimony and Exhibits in Docket No. 2000-40-C to be hand-delivered to the following:

Caroline N. Watson, Esquire  
BELLSOUTH TELECOMMUNICATIONS, INC.  
1600 Hampton Street  
Suite 821  
Columbia, South Carolina 29201

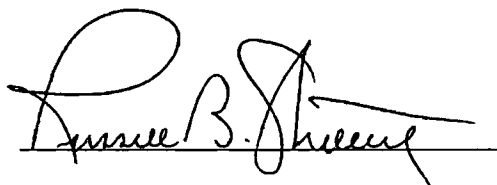


A handwritten signature in black ink, reading "Russell B. Shetterly", written over a horizontal line.

**CERTIFICATE OF SERVICE**

I, Russell B. Shetterly, do hereby certify that I have, on this 29<sup>th</sup> day of March, 2000, caused James C. Falvey's Rebuttal Testimony and Exhibits in Docket No. 2000-40-C to be served by first class U.S. mail, postage prepaid:

Parkey Jordan, Esquire  
BELLSOUTH TELECOMMUNICATIONS, INC.  
675 West Peachtree Street, NE  
Atlanta, Georgia 30375

A handwritten signature in black ink, appearing to read "Russell B. Shetterly", written over a horizontal line.

**POSTED**  
DW 3-29-00

S. C. PUBLIC SERVICE COMMISSION  
**RECEIVED**  
MAR 29 2000

**BEFORE THE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

In the Matter of )  
 )  
Petition by e.SPIRE COMMUNICATIONS, INC. )  
On Behalf of Itself and its Operating Subsidiaries )  
in South Carolina, for Arbitration of an )  
Interconnection Agreement with BELL SOUTH )  
TELECOMMUNICATIONS, INC. Pursuant to )  
Section 252(b) of the Telecommunications Act )  
of 1996, as Amended )

Docket No. 2000-040-C

S. C. PUBLIC SERVICE COMMISSION  
**RECEIVED**  
MAR 30 2000  
**RECEIVED**  
UTILITIES DEPARTMENT

**REBUTTAL TESTIMONY  
OF JAMES C. FALVEY  
ON BEHALF OF  
E.SPIRE COMMUNICATIONS, INC.  
AND ITS OPERATING AFFILIATES**

RETURN DATE: OK DBW  
SERVICE: OK DBW

**March 29, 2000**

**I. Introduction**

**Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS FOR THE RECORD.**

**A.** My name is James C. Falvey. I am Vice President – Regulatory Affairs for e.spire Communications, Inc. (“e.spire”), which formerly was known as American Communications Services, Inc. or “ACSI”. My business address is 133 National Business Parkway, Suite 200, Annapolis Junction, MD 20701.

**Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

**A.** I am testifying on behalf of e.spire and its operating affiliates.

**Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

**A.** Yes. I filed direct testimony in this proceeding on January 24, 2000.

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

**A.** The purpose of my testimony today is to rebut BellSouth Telecommunications, Inc.’s (“BellSouth”) witnesses’ direct testimony. In particular, I will respond to certain assertions made by BellSouth witnesses Alphonso J. Varner and W. Keith Milner. To facilitate Commission review, I will follow my earlier practice of setting forth each issue in boldface type prior to any discussion. In this rebuttal testimony, I respond to some, but not all, of BellSouth’s assertions and

## Rebuttal Testimony of James C. Falvey

1 characterizations. My decision to selectively respond to certain of BellSouth's  
2 assertions should in no way be construed as a waiver, or an acceptance of  
3 BellSouth's claims and arguments to which I do not specifically respond here.  
4

5 **Q. HAVE BELLSOUTH AND E.SPIRE RESOLVED ANY ISSUES**  
6 **SUBSEQUENT TO THE FILING OF YOUR DIRECT TESTIMONY?**

7 **A.** Yes. The parties have closed quite a few issues in the interim. I have attached as  
8 **"Exhibit 1"** to my rebuttal testimony a revised issue matrix that sets forth the  
9 issues between the parties as they currently stand. In addition to closing several  
10 issues, the parties agreed to add one additional issue, Issue 64, which is set forth  
11 in the current issue matrix.

12 In light of the fact that certain of the issues originally designated for this  
13 proceeding have been closed by agreement of the Parties, my rebuttal testimony  
14 will not address them. I reserve the right, however, to file a supplemental  
15 response if, contrary to my understanding, these issues have not in fact been  
16 resolved.

17  
18  
19 **(ISSUE 1): SHOULD BELLSOUTH BE REQUIRED TO PAY LIQUIDATED**  
20 **DAMAGES FOR FAILURE TO (i) MEET SPECIFIED INTERVALS**  
21 **PRESCRIBED IN THE AGREEMENT FOR UNES, AND (ii) PROVIDE SERVICE**  
22 **AT PARITY AS MEASURED BY THE SPECIFIED PERFORMANCE**  
23 **METRICS?**

## Rebuttal Testimony of James C. Falvey

1   **Q.   DO YOU AGREE WITH MR. VARNER THAT STATE LAW AND**  
2       **COMMISSION PROCEDURES ARE SUFFICIENT TO ADDRESS**  
3       **BELLSOUTH PERFORMANCE PROBLEMS?**

4   A.   No. Although state law and Commission procedures are certainly important to the  
5       enforcement of the parties' interconnection agreement, in practice they do not  
6       adequately protect e.spire from BellSouth's failure or unwillingness to perform.  
7       The ability to seek court action or file a complaint at the Commission or at the  
8       FCC in practice does little to encourage BellSouth to offer service to e.spire at  
9       parity to itself. Such remedies, although valuable in some contexts, are best  
10      expensive, time-consuming and cumbersome. On the other hand, built-in  
11      enforcement provisions with meaningful performance metrics and liquidated  
12      damages for failure to perform, deter anticompetitive actions, and are self-  
13      policing.

14  
15   **Q.   WHAT DOES E.SPIRE THINK ABOUT BELLSOUTH'S VOLUNTARY**  
16       **PROPOSAL   FOR   SELF-EFFECTUATING   ENFORCEMENT**  
17       **MEASURES?**

18   A.   In all honesty, e.spire has just received them, and not had sufficient opportunity to  
19       review them as of this writing. However, it stands to reason that BellSouth would  
20       not voluntarily impose upon itself sufficiently strict performance metrics, or  
21       adequate enforcement measures. Acritically accepting BellSouth's proposal to  
22       police itself is a little like leaving the fox to guard the henhouse. I do discuss one

## Rebuttal Testimony of James C. Falvey

1 aspect of their performance measurements, however, later in my testimony, in  
 2 regard to the issue of whether BellSouth should develop and implement a new  
 3 performance metric for frame relay interconnection provisioning.

4  
 5 **Q. WHAT ABOUT MR. VARNER'S TESTIMONY THAT THIS**  
 6 **COMMISSION DOES NOT HAVE AUTHORITY TO IMPOSE FINES OR**  
 7 **PENALTIES IN AN ARBITRATED AGREEMENT?**

8 A. e.spire believes that the Commission should consider the imposition of reasonable  
 9 performance metrics and liquidated damages for failure to perform. If BellSouth  
 10 is given free rein to behave as it wishes in South Carolina, without any  
 11 meaningful adverse consequences, the result will be severe impediments to  
 12 competition in the local telecommunications marketplace.

13  
 14 **(ISSUE 2): SHOULD FCC AND COMMISSION ORDERS THAT ARE**  
 15 **"EFFECTIVE" OR "FINAL AND NON-APPEALABLE" BE INCORPORATED**  
 16 **INTO THE AGREEMENT?**

17  
 18 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
 19 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
 20  
 21  
 22

1 **(ISSUE 3):** SHOULD A “FRESH LOOK” PERIOD BE ESTABLISHED THAT  
2 PERMITS CUSTOMERS SUBJECT TO BELL SOUTH VOLUME AND TERM  
3 SERVICE CONTRACTS TO SWITCH TO E.SPIRE SERVICE WITHOUT  
4 IMPOSITION OF EARLY TERMINATION PENALTIES?

5  
6 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
7 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
8  
9

10 **(ISSUE 4):** SHOULD BELL SOUTH PROVIDE INTRALATA TOLL SERVICE  
11 TO E.SPIRE LOCAL EXCHANGE SERVICE CUSTOMERS ON THE SAME  
12 BASIS THAT IT PROVIDES INTRALATA TOLL SERVICES TO ALL  
13 CUSTOMERS OF BELL SOUTH LOCAL EXCHANGE SERVICES?

14  
15 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
16 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
17  
18

19 **(ISSUE 5):** SHOULD THE DEFINITION OF “LOCAL TRAFFIC” INCLUDE  
20 DIAL-UP CALLING TO MODEMS AND SERVERS OF INTERNET SERVICE  
21 PROVIDERS (“ISPS”) LOCATED WITHIN THE LOCAL CALLING AREA?  
22

## Rebuttal Testimony of James C. Falvey

1   **Q.   HAVE THERE BEEN ANY NEW DEVELOPMENTS IN THIS**  
2       **CONTROVERSY THAT SHOULD ALTER THE WAY THE**  
3       **COMMISSION ADDRESSES THIS ISSUE?**

4   A.   Yes. There has been a very dramatic development. Last Friday, on March 24,  
5       2000, the United States Court of Appeals for the District of Columbia Circuit  
6       issued a decision (*Bell Atlantic Telephone Cos. v. FCC* (Nos. 99-1094 et al.)  
7       vacating the FCC's February 26, 1999 Declaratory Ruling in *Implementation of*  
8       *the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC  
9       Rcd 3689 (1999). The FCC's Declaratory Ruling was the basis for the theory that  
10      ISP-bound traffic is largely interstate in character. Now, however, that basis no  
11      longer exists. I have attached a copy of the DC Circuit's order as "Exhibit 2" to  
12      my rebuttal testimony.

13  
14   **Q.   HOW SHOULD THE DC CIRCUIT'S DECISION INFLUENCE THIS**  
15       **PROCEEDING?**

16   A.   Both BellSouth's testimony and this Commission's former position with respect  
17       to the payment of reciprocal compensation on ISP-bound traffic are tied to the  
18       determination in the FCC's Declaratory Order that such traffic is largely  
19       interstate, and therefore not local, in character. Since that Order has been  
20       expressly overturned by the Court of Appeals, it can no longer be relied upon.  
21       More importantly, the Court's opinion cast aspersions on the reasoning  
22       underlying the FCC's characterization of ISP bound traffic as non-local in

## Rebuttal Testimony of James C. Falvey

1 character. Accordingly, Mr. Varner's testimony on this subject is almost entirely  
 2 mooted. It would appear from the Court's opinion that the facts more reasonably  
 3 support a finding that ISP bound traffic is in fact local in character, and *terminates*  
 4 *at the ISP*. In the absence of the FCC's Declaratory Ruling, there is every reason  
 5 to suppose that this traffic should be included in the definition of local traffic, and  
 6 reciprocal compensation should be paid for it.

7  
 8 **Q. SHOULD THE COMMISSION "REAFFIRM ITS PREVIOUS RULING"**  
 9 **ON THIS ISSUE AS REQUESTED BY BELLSOUTH?**

10 A. No. In fact, in light of the DC Circuit's order, vacating the FCC's Declaratory  
 11 Ruling, the Commission may wish to reopen those proceedings in which it  
 12 determined that the definition of local traffic should exclude ISP bound traffic.

13  
 14 **(ISSUE 6): SHOULD THE DEFINITION OF "SWITCHED EXCHANGE**  
 15 **ACCESS SERVICE" AND "SWITCHED ACCESS TRAFFIC" INCLUDE VOICE-**  
 16 **OVER-INTERNET PROTOCOL ("VOIP") TRANSMISSIONS?**

17  
 18 **Q. WHAT COMMENTS DOES E.SPIRE HAVE IN RESPONSE TO MR.**  
 19 **VARNER'S TESTIMONY ON THIS ISSUE?**

20 A. Mr. Varner devotes a great deal of effort in an attempt to characterize VOIP  
 21 transmissions as a telecommunications service. However, the fact remains that  
 22 this issue is a matter properly to be considered by the FCC, and not in a piecemeal

## Rebuttal Testimony of James C. Falvey

1 fashion in the occasional state interconnection arbitration. VOIP transmissions  
 2 and other forms of ESP/ISP traffic should continue to be outside the definition of  
 3 “Switched Access Traffic” until such time as the FCC or Congress acts to  
 4 characterize it differently.

5  
 6 **(ISSUE 7): SHOULD E.SPIRE’S LOCAL SWITCH BE CLASSIFIED AS BOTH A**  
 7 **TANDEM AND END OFFICE SWITCH FOR PURPOSES OF BILLING**  
 8 **RECIPROCAL COMPENSATION?**

9  
 10 **Q. IS IT LEGALLY NECESSARY FOR E.SPIRE TO PROVE THAT ITS**  
 11 **SWITCH IS FUNCTIONALLY EQUIVALENT TO BELL SOUTH’S**  
 12 **TANDEM?**

13 **A.** No. BellSouth’s position is simply not supported by applicable law. The sole  
 14 criterion set forth in the FCC’s rule 51.711(a)(3) is whether e.spire’s switch serves  
 15 a geographic area comparable to that served by BellSouth’s tandem. The issue of  
 16 switch functionality should not be at issue here at all, because it is *not even*  
 17 *mentioned* in the applicable FCC rule, Rule 51.711(a)(3). That rule states, *in full*,  
 18 as follows:

19 Where the switch of a carrier other than an incumbent LEC serves  
 20 a geographic area comparable to the area served by the incumbent  
 21 LEC’s tandem switch, the appropriate rate for the carrier other than  
 22 an incumbent LEC is the incumbent LEC’s tandem interconnection  
 23 rate.  
 24

## Rebuttal Testimony of James C. Falvey

1 This language is unequivocal. Under applicable law, if e.spire's switch serves a  
 2 geographical area comparable to that served by the ILEC tandem, e.spire is  
 3 entitled to compensation at the tandem interconnection rate. I don't think it is  
 4 possible to read anything else into this rule other than what it actually states.

5 he question of whether e.spire's switch is *entitled to be compensated* at the  
 6 tandem rate is an *entirely separate* question from whether e.spire's switch  
 7 operates in precisely the same manner as BellSouth's tandem switch. Logically,  
 8 if e.spire's switch function were identical to Bellsouth's tandem, there would be  
 9 no question as to how it should be compensated: hence, there would be no need  
 10 for the FCC's rule at all. The FCC's rule names at least one specific instance in  
 11 which there should be no doubt as to whether compensation at the tandem  
 12 interconnection rate is due, namely, when the non-incumbent carrier's switch  
 13 serves an area of geographic scope comparable to that served by the ILEC's  
 14 tandem.

15  
 16 **Q. BUT WHAT ABOUT THE LANGUAGE CONTAINED IN THE FCC'S**  
 17 **1996 FIRST REPORT AND ORDER IN DOCKET NO. 96-98 THAT**  
 18 **MENTIONS TANDEM SWITCH FUNCTIONALITY IN CONNECTION**  
 19 **WITH ENTITLEMENT TO THE TANDEM INTERCONNECTION**  
 20 **RATE?**

## Rebuttal Testimony of James C. Falvey

1 A. The language in question, contained in Paragraph 1090 of the FCC's August,  
 2 1996 First Report and Order,<sup>1</sup> does not by any means contradict my reading of  
 3 FCC Rule 51.711(a)(3). It states in pertinent part:

4  
 5 states shall also consider whether new technologies (*e.g.*, fiber ring  
 6 or wireless networks) perform functions similar to those performed  
 7 by an incumbent LEC's tandem switch and thus, whether some or  
 8 all calls terminating on the new entrant's network should be priced  
 9 the same as the sum of transport and termination via the incumbent  
 10 LEC's tandem switch. *Where the interconnecting carrier's switch*  
 11 *serves a geographic area comparable to that served by the*  
 12 *incumbent LEC's tandem switch, the appropriate proxy for the*  
 13 *interconnecting carrier's additional costs is the LEC tandem*  
 14 *interconnection rate.*

15  
 16  
 17 First Report and Order in FCC Docket 96-98 at Paragraph 1090 (emphasis  
 18 supplied). As can be seen, despite BellSouth's argumentative position, neither the  
 19 language of 47 C.F.R. Section 51.711(a)(3) nor the FCC's First Report and Order  
 20 requires a "two-pronged" test for entitlement to the tandem interconnection rate.  
 21 On the contrary, the FCC's order states plainly that the tandem interconnection  
 22 rate *must be applied* where the CLEC switch covers a comparable geographical  
 23 area. One possible reading of this is that the FCC simply made the affirmative  
 24 determination that coverage of a comparable geographical area by a non-  
 25 incumbent carrier switch *is a conclusive demonstration* that the CLEC switch  
 26 performs a similar function to that of the ILEC's tandem. This would certainly  
 27 make sense in my opinion, in part because there are added expenses involved in

---

<sup>1</sup> *In re Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (August 8, 1996).

## Rebuttal Testimony of James C. Falvey

1 serving a large geographic area, whether served by the incumbent carrier's legacy  
 2 network architecture, or by the more modern network architecture deployed by a  
 3 competitive carrier. At any rate, the incorporation of this *sole requirement* by the  
 4 FCC in its rule should remove any doubt as to the agency's intent. If the  
 5 "geographic scope" issue is satisfied, that is the end of the question.

6  
 7 **Q. DO YOU HAVE ANY FURTHER COMMENTS ON THE APPLICATION**  
 8 **OF THE LANGUAGE IN THE FCC'S FIRST REPORT AND ORDER IN**  
 9 **DOCKET NO. 96-98 TO THIS PROCEEDING?**

10 A. Yes. I would submit that, far from imposing a two-pronged eligibility test for  
 11 tandem compensation, the FCC's language in the First Report and Order creates  
 12 the possibility that, while serving an area of comparable geographic scope is  
 13 certainly conclusive proof of entitlement to tandem compensation (and no further  
 14 demonstration is required for purposes of satisfying the requirements of Rule  
 15 51.711(a)(3)), there may be *other situations* in which a CLEC may be entitled to  
 16 receive the tandem interconnection rate, even if its switch *does not* cover a  
 17 comparable geographical area, if it demonstrably performs a similar function. It  
 18 should be noted that the FCC in its order expressly took into account the  
 19 possibility that a CLEC switch incorporated in different network architectures  
 20 such as the "fiber ring" could be determined to perform the same or similar  
 21 function as an ILEC tandem.

22

## Rebuttal Testimony of James C. Falvey

1    **Q.    HAS ANY STATE DETERMINED THAT A CLEC SWITCH ARRANGED**  
 2           **IN A FIBER RING PERFORMS A FUNCTION THAT IS THE SAME OR**  
 3           **SIMILAR TO THE FUNCTION PERFORMED BY AN ILEC TANDEM?**

4    A.    Yes. In fact, the North Carolina Utility Commission recently (March 1, 2000)  
 5           determined in the course of an arbitration under Section 252 of the  
 6           Telecommunications Act that ICG Telecom Group's Lucent 5ESS switch  
 7           arranged as part of a SONET ring network performed the same or similar function  
 8           as BellSouth's tandem switch, and therefore was entitled to be compensated at the  
 9           tandem interconnection rate.<sup>2</sup> I attach the North Carolina order as "Exhibit 3" to  
 10          my rebuttal testimony. A similar result was also reached in an Alabama case last  
 11          November, and I have attached that case as "Exhibit 4" to my rebuttal  
 12          testimony.<sup>3</sup> (I should also add that in both cases the commissions also determined  
 13          that the CLEC switches served areas comparable in geographic scope to that  
 14          served by the ILEC's tandems.) Importantly, the despite finding similar  
 15          functionality, the Alabama case also pointed out that geographic scope was the

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<sup>2</sup> *In the Matter of Petition by ICG Telecom Group, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Order Ruling on Objections, Request for Clarification, Reconsideration and Composite Agreement, Docket No. P-582, Sub 6 (NC Util. Comm'n March 1, 2000).*

<sup>3</sup> *In the Matter of Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Final Order on Arbitration, Docket No. 27069 (Al. Pub Serv. Comm'n November 10, 1999).*

1           only criterion that was required by law to be satisfied for entitlement to the  
2           tandem interconnection rate compensation.

3  
4       **Q.    WHY ARE THESE DECISIONS FROM OTHER STATE COMMISSIONS**  
5       **PERTINENT TO E.SPIRE'S SITUATION IN THIS PROCEEDING?**

6       A.    I think the determinations in the North Carolina and Alabama orders are  
7           particularly telling in this situation, since e.spire uses the same large and capable  
8           switch, a Lucent 5ESS, and also deploys a SONET ring network architecture and  
9           a variety of remote devices to direct telecommunications traffic. In addition, as  
10          noted in those decisions with respect to ICG's switches, e.spire's multifunctional  
11          Lucent switches do exhibit tandem capabilities. For example, e.spire's switching  
12          platforms meet the definition and perform the same functions identified within the  
13          Local Exchange Routing Guide for tandem offices and for Class 4/5 switches.  
14          Moreover, e.spire's switches also perform the tandem's function of aggregation of  
15          traffic from multiple remote locations.

16  
17       **Q.    DOES E.SPIRE HAVE TO PROVIDE INFORMATION AS TO THE**  
18       **LOCATION OF ITS CUSTOMERS TO DEMONSTRATE HOW ITS**  
19       **CUSTOMERS ARE BEING SERVED BY ITS SWITCHES?**

## Rebuttal Testimony of James C. Falvey

1 A. No. This is not a requirement of the FCC's rule. The unpublished opinion in the  
 2 Northern District of Illinois cited by Mr. Varner (at page 21 of his testimony)<sup>4</sup> is  
 3 not binding on proceedings in South Carolina, and even BellSouth does not claim  
 4 that it is, or that it represents a mainstream view. In fact, it is possible to read this  
 5 case entirely differently, to support e.spire's position in this proceeding.

6  
 7 **Q. HOW CAN THE MCI CASE CITED BY MR. VARNER BE READ IN**  
 8 **SUPPORT OF E.SPIRE'S POSITION?**

9 A. First, the District Court agreed with the Illinois PUC that MCI's switch performed  
 10 a comparable function to Ameritech's tandem switch. The Court stated:

11 The issue of comparable functionality apparently was not in  
 12 serious dispute. MCI presented evidence that its switch served to  
 13 aggregate calls that could then be distributed to any MCI customer  
 14 within the switch's service area, and that Ameritech's switches  
 15 served the same function.

16  
 17 *MCI-Ameritech*, 1999 LEXIS 11418 at \*20. In my Direct Testimony, I  
 18 pointed out how e.spire's switch performed the tandem-like function of  
 19 aggregating traffic from remote locations, but Mr. Varner did not respond  
 20 to this in his testimony, despite the fact that the case he cites finds this  
 21 significant.

---

<sup>4</sup> *MCI Telecommunications Corporation and MCIMetro Access Transmission Services v. Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 97-C-2225, 1999 U. S. Dist. LEXIS 11418 (N.D. Ill. 1999) ("*MCI-Ameritech*")

1   **Q.   IS THERE ANYTHING ELSE THE COMMISSION SHOULD**  
 2       **NOTE ABOUT THE *MCI-AMERITECH* CASE CITED BY MR.**  
 3       **VARNER?**

4   A.   Yes – and this is very important. The District Court in the *MCI-Ameritech* case  
 5       cited by Mr. Varner agrees that the relevant standard to be applied is whether the  
 6       CLEC switch covers the same area as *a single ILEC tandem*. In the Court’s  
 7       decision, it was clear that if MCI had proved that its switch covered a geographic  
 8       area comparable to *a single Ameritech tandem*, this would have resulted in a  
 9       favorable ruling. *See MCI-Ameritech* at \*20 to \*22. The reason MCI did not  
 10      prevail is that, while claiming that it actually served a geographic area comparable  
 11      to *three* Ameritech tandems (the entire Chicago area) -- therefore obviously  
 12      served an area comparable to *one* of the tandems,

13               MCI “expressly refused” to provide “specific empirical data,  
 14               including maps, to demonstrate that it serves an area comparable to  
 15               Ameritech’s tandem network. [citations omitted] In short, MCI  
 16               offered nothing but bare, unsupported conclusions that its switch  
 17               *currently served an area comparable to an Ameritech tandem*  
 18               *switch or was capable of serving such an area in the future*. The  
 19               ICC’s determination that “MCI has not provided sufficient  
 20               evidence to support a conclusion that it is entitled to the tandem  
 21               interconnection rate” was not arbitrary and capricious.

22  
 23      *Id.* at \*22 to \*23 (emphasis supplied). So the reason MCI did not succeed  
 24      in obtaining the tandem interconnection rate in Mr. Varner’s case is that it  
 25      *refused* to provide the kind of evidence that e.spire has provided in this  
 26      proceeding: maps, and proof that the switch serves a comparable area to  
 27      BellSouth’s tandem.

## Rebuttal Testimony of James C. Falvey

1           This case does not stand for the proposition that it is always  
 2           necessary for a CLEC to reveal the location of its customers in order to  
 3           flesh out entitlement to the tandem interconnection rate under the FCC's  
 4           Rule 51.711(a)(3) as Mr. Varner would have the Commission believe.  
 5           The District Court just found that it was not arbitrary and capricious for  
 6           the Illinois commission to look to such information, because it was  
 7           *relevant to* the geographic scope question. *MCI-Ameritech* at \*23 n.10.  
 8           Being "relevant to" an issue is a far cry from being an essential component  
 9           of a *prima facie* showing. This meant that the District Court refused to  
 10          reverse the Illinois commission's decision on the basis that it improperly  
 11          looked to that data, or lack thereof, as part of its decision.

12  
 13   **Q.   MR. VARNER CLAIMS IN HIS TESTIMONY THAT E.SPIRE HAS**  
 14   **FAILED TO MEET SEVERAL REQUIREMENTS FOR PROVING THAT**  
 15   **ITS SWITCH SERVES A GEOGRAPHIC AREA COMPARABLE TO**  
 16   **BELLSOUTH'S TANDEM. HOW DO YOU RESPOND TO THIS?**

17   **A.**   First of all, Mr. Varner is simply fabricating these requirements out of whole  
 18          cloth. The FCC has not elaborated on how a CLEC can demonstrate that its  
 19          switch serves a comparable geographic area, and there has been no definitive  
 20          interpretation in the courts. BellSouth cannot simply pick the most draconian  
 21          interpretation of the rule, and make up a variety of different standards that must  
 22          be met. Second, the maps provided by e.spire indicate the area its switches serve.

## Rebuttal Testimony of James C. Falvey

1 The legal distinction between “actually serving” and “capable of serving” does  
 2 not exist – it is simply an interpretation that BellSouth is urging in this case.  
 3 There is no authority whatsoever for the notion that e.spire must demonstrate that  
 4 it “has built or is leasing the loop facilities necessary to actually serve customers  
 5 scattered throughout the area.” Varner Testimony at 22.  
 6

7 **Q. DO YOU HAVE ANY COMMENTS ON BELL SOUTH’S MAPS?**

8 A. BellSouth’s maps do not appear to be the correct comparison for the purpose of  
 9 meeting the requirements of FCC Rule 51.711(a)(3). BellSouth wishes to present  
 10 the areas served by *all of* their access tandems and local tandems. But this is not  
 11 what the FCC’s rule states. The operative question is not whether e.spire’s switch  
 12 serves a geographic area comparable to BellSouth’s tandems, but whether it  
 13 serves a geographic area comparable to *a single* BellSouth tandem. This is the  
 14 plain language of the FCC’s Rule and of the First Report and Order. Although  
 15 this distinction has not been broached yet in South Carolina, at least one  
 16 jurisdiction, Minnesota, has recently pointed this out. *See US West*  
 17 *Communications, Inc. v. Minn. Pub. Util. Comm’n*, 55 F. Supp. 2d 968 (D. Minn.  
 18 1999) (a copy of this decision has been attached hereto as **“Exhibit 5”**). Since  
 19 BellSouth’s maps apparently show the areas served by a multiplicity of tandems,  
 20 they are not appropriate comparisons to e.spire’s maps for purposes of the FCC’s  
 21 rule. As noted above, even Mr. Varner’s *MCI-Ameritech* case notes that it is only  
 22 necessary to cover a geographic area comparable to *one* ILEC tandem.

## Rebuttal Testimony of James C. Falvey

1 **(ISSUE 8): SHOULD BELLSOUTH BE REQUIRED TO LOWER RATES FOR**  
 2 **MANUAL SUBMISSION OF ORDERS, OR, ALTERNATIVELY, ESTABLISH A**  
 3 **REVISED “THRESHOLD BILLING PLAN” THAT (I) EXTENDS THE**  
 4 **TIMEFRAME FOR MIGRATION TO ELECTRONIC ORDER SUBMISSION**  
 5 **AND (II) DELETES SERVICES WHICH ARE NOT AVAILABLE THROUGH**  
 6 **ELECTRONIC INTERFACES FROM THE CALCULATION OF THRESHOLD**  
 7 **BILLING AMOUNTS?**

8  
 9 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
 10 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
 11

12  
 13  
 14 **(ISSUE 9): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**  
 15 **REASONABLE AND NONDISCRIMINATORY ACCESS TO UNBUNDLED**  
 16 **NETWORK ELEMENTS (“UNES”) IN ACCORDANCE WITH ALL *EFFECTIVE***  
 17 **RULES AND DECISIONS OF THE FCC AND THIS COMMISSION?**

18  
 19 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
 20 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
 21

22  
 23 **(ISSUE 10): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE E.SPIRE**  
 24 **WITH ACCESS TO EXISTING COMBINATIONS OF UNES IN BELLSOUTH’S**  
 25 **NETWORK AT UNE RATES?**

## Rebuttal Testimony of James C. Falvey

*[This issue has been resolved by agreement of the parties. BellSouth did not offer direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*

**(ISSUE 11): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE ACCESS TO ENHANCED EXTENDED LINKS (“EELS”) AT UNE RATES WHERE THE LOOP AND TRANSPORT ELEMENTS ARE CURRENTLY COMBINED AND PURCHASED THROUGH BELLSOUTH’S SPECIAL ACCESS TARIFF?**

*[This issue has been resolved by agreement of the parties. BellSouth did not offer direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*

**(ISSUE 12): IF BELLSOUTH PROVIDES ACCESS TO EELS AT UNE RATES WHERE THE LOOP AND TRANSPORT ELEMENTS ARE CURRENTLY COMBINED AND PURCHASED THROUGH BELLSOUTH’S SPECIAL ACCESS TARIFF, SHOULD E.SPIRE BE ENTITLED TO UTILIZE THE ACCESS SERVICE REQUEST (“ASR”) PROCESS TO SUBMIT ORDERS?**

**Q. WHAT REACTION DOES E.SPIRE HAVE TO MR. VARNER’S TESTIMONY ON THIS ISSUE?**

**A.** Mr. Varner does not want to commit BellSouth to allowing use of the ASR system for ordering EELs, but he does not offer anything in exchange. His

## Rebuttal Testimony of James C. Falvey

1 response is that BellSouth is “currently developing” operational procedures to be  
 2 used, and that CLECs will be notified on completion. It may well be that *in time*  
 3 there will be a preferable way of ordering EELs that will be faster, cheaper, more  
 4 efficient. In the meantime, BellSouth should allow CLECs to order through the  
 5 ASR process. Mr. Varner states that BellSouth *is not obligated* to make this  
 6 process available – but arguably BellSouth *is obligated* to make *some* reasonable  
 7 process available – now, not later. BellSouth should offer access to the ASR  
 8 process as a good faith gesture in the interim – and if BellSouth does not offer this  
 9 in good faith, the Commission should act to impose this requirement on  
 10 BellSouth.

11  
 12 **(ISSUE 13): IF E.SPIRE SUBMITS ORDERS FOR EELS, SHOULD**  
 13 **BELLSOUTH BE REQUIRED TO MAKE THE RESULTANT BILLING**  
 14 **CONVERSION WITHIN 10 DAYS?**

15  
 16 **Q. WHAT IS E.SPIRE’S RESPONSE TO MR. VARNER’S TESTIMONY ON**  
 17 **THIS ISSUE?**

18 **A.** BellSouth again states that it is in the process of developing the necessary  
 19 procedures. e.spire is concerned with how to handle this issue right now, and not  
 20 in the indefinite future. The proposal for a 10 day billing conversion is reasonable  
 21 on its face, and should be adopted. That way, whenever BellSouth issues its

## Rebuttal Testimony of James C. Falvey

1 procedures in this area, it will have this 10 day conversation incorporated as part  
2 of them.

3  
4 **(ISSUE 14): SHOULD BELL SOUTH BE PROHIBITED FROM IMPOSING**  
5 **NON-RECURRING CHARGES OTHER THAN A NOMINAL SERVICE ORDER**  
6 **FEE FOR EEL BILLING CONVERSIONS?**

7  
8 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
9 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
10  
11

12 **(ISSUE 15): SHOULD THE PARTIES UTILIZE THE FCC'S MOST RECENT**  
13 **DEFINITION OF "LOCAL LOOP" INCLUDED IN THE *UNE REMAND***  
14 ***ORDER*?**

15  
16 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
17 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
18  
19

20 **(ISSUE 16): SHOULD BELL SOUTH BE REQUIRED TO CONDITION LOOPS**  
21 **AS NECESSARY TO PROVIDE ADVANCED SERVICES IN ACCORDANCE**  
22 **WITH THE FCC'S *UNE REMAND ORDER*?**

23  
24 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
25 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
26

## Rebuttal Testimony of James C. Falvey

1 **(ISSUE 17): SHOULD THE PARTIES UTILIZE THE FCC'S MOST RECENT**  
2 **DEFINITION OF NETWORK INTERFACE DEVICE ("NID") INCLUDED IN**  
3 **THE *UNE REMAND ORDER*?**

4  
5 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
6 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
7  
8

9 **(ISSUE 18): SHOULD BELL SOUTH BE REQUIRED TO OFFER SUBLOOP**  
10 **UNBUNDLING IN ACCORDANCE WITH THE FCC'S *UNE REMAND ORDER*?**

11  
12 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
13 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
14  
15

16 **(ISSUE 19): SHOULD BELL SOUTH BE REQUIRED TO PROVIDE ACCESS TO**  
17 **LOCAL CIRCUIT SWITCHING, LOCAL TANDEM SWITCHING AND**  
18 **PACKET SWITCHING CAPABILITIES ON AN UNBUNDLED BASIS IN**  
19 **ACCORDANCE WITH THE FCC'S *UNE REMAND ORDER*?**

20  
21 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
22 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
23  
24  
25

## Rebuttal Testimony of James C. Falvey

1 **(ISSUE 20): SHOULD THE PARTIES UTILIZE THE DEFINITIONS OF LOCAL**  
2 **CIRCUIT SWITCHING, LOCAL TANDEM SWITCHING AND PACKET**  
3 **SWITCHING INCLUDED IN THE FCC'S UNE REMAND ORDER?**

4  
5 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
6 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
7

8  
9 **(ISSUE 21): SHOULD BELL SOUTH BE REQUIRED TO PROVIDE**  
10 **NONDISCRIMINATORY ACCESS TO INTEROFFICE TRANSPORT/**  
11 **TRANSMISSION FACILITIES IN ACCORDANCE WITH THE TERMS OF THE**  
12 **FCC'S UNE REMAND ORDER?**

13  
14 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
15 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
16

17  
18  
19 **(ISSUE 22): SHOULD THE PARTIES UTILIZE A DEFINITION OF**  
20 **INTEROFFICE TRANSPORT CONSISTENT WITH THE USAGE IN THE**  
21 **FCC'S UNE REMAND ORDER, THAT INCLUDES DARK FIBER, DS1, DS3,**  
22 **OCN LEVELS AND SHARED TRANSPORT?**

23  
24 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
25 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
26

1 **(ISSUE 23): SHOULD BELLSOUTH PROVIDE NONDISCRIMINATORY**  
 2 **ACCESS TO OPERATIONS SUPPORT SYSTEMS (“OSS”) AND SHOULD THE**  
 3 **PARTIES UTILIZE A DEFINITION OF OSS CONSISTENT WITH THE FCC’S**  
 4 **UNE REMAND ORDER?**

5  
 6 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
 7 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
 8  
 9

10 **(ISSUE 24): SHOULD BELLSOUTH BE REQUIRED TO INCLUDE SPECIFIC**  
 11 **INSTALLATION INTERVALS IN THE AGREEMENT FOR EELS AND EACH**  
 12 **TYPE OF INTEROFFICE TRANSPORT?**

13  
 14 **Q. DO YOU HAVE ANY COMMENTS ON MR. VARNER’S TESTIMONY**  
 15 **FOR THIS ISSUE?**

16 **A.** Yes. Mr. Varner again notes that processes and procedures for EELs are under  
 17 development. This is essentially a method of avoiding this topic. The question at  
 18 hand is whether BellSouth should be required to include specific installation  
 19 intervals for EELs. Whether BellSouth is working on development of processes  
 20 and procedures or not, the Commission is free to require that they include specific  
 21 installation intervals as part of that process. e.spire submits that this would add a  
 22 beneficial measure of certainty to the process that does not currently exist.  
 23

## Rebuttal Testimony of James C. Falvey

1 **(ISSUE 25): SHOULD BELLSOUTH BE COMPELLED TO ESTABLISH**  
2 **GEOGRAPHICALLY-DEAVERAGED RATES FOR NRCS AND RECURRING**  
3 **CHARGES FOR ALL UNES?**

4  
5 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
6 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
7

8  
9 **(ISSUE 26): SHOULD BELLSOUTH BE REQUIRED TO ESTABLISH TELRIC-**  
10 **BASED RATES FOR NEW UNES REQUIRED BY THE UNE REMAND ORDER?**

11  
12 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
13 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
14

15  
16 **(ISSUE 27): SHOULD BOTH PARTIES BE ALLOWED TO ESTABLISH THEIR**  
17 **OWN LOCAL CALLING AREAS AND ASSIGN NUMBERS FOR LOCAL USE**  
18 **ANYWHERE WITHIN SUCH AREAS, CONSISTENT WITH APPLICABLE**  
19 **LAW?**

20  
21 **Q. WHAT RESPONSE DO YOU HAVE TO MR. MILNER'S TESTIMONY**  
22 **ON THIS ISSUE?**

23 **A.** It would appear that BellSouth concurs that e.spire may design its own local  
24 calling areas and assign NPA/NXX's where it pleases within those areas. But

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1 BellSouth apparently wants to be able to discriminate between some of e.spire's  
2 users of NPA/NXXs and others using the same NPA/NXXs so that it can charge  
3 its own (BellSouth's) customers differently for their originated calls to one  
4 NPA/NXX or the other. But this type of approach is just an indirect way of  
5 controlling the way e.spire designs its calling areas. BellSouth wants to  
6 discourage (by imposition of toll rates) calls to one e.spire customer using 803-  
7 972 while encouraging calls to another e.spire user of 803-972 (by considering the  
8 call local), depending on where these customers are placed physically on the map.  
9 This attempt to exert control over e.spire's design of its calling areas, however, is  
10 overreaching. The point of using 803-972 is to ensure that *everyone* who calls  
11 that NPA/NXX from a given exchange is making a local call or a toll call. As  
12 noted by the California Public Utility Commission in a recent case, to  
13 discriminate by price between callers in the same exchange calling the same  
14 NPA/NXX would "undermine the ability of customers to discern whether a given  
15 NXX prefix will result in toll charges or not." *Order Instituting Rulemaking on*  
16 *the Commission's Own Motion Into Competition for Local Exchange Service,*  
17 *Decision 99-09-029 at 26 (Cal. PUC, September 2, 1999).* (A copy of this order  
18 is attached as "**Exhibit 6**" to this rebuttal testimony.) Accordingly, BellSouth  
19 should not seek to discriminate in this fashion, even against its own customers.  
20  
21

1 **(ISSUE 28): IN THE EVENT THAT E.SPIRE CHOOSES MULTIPLE TANDEM**  
2 **ACCESS (“MTA”), MUST E.SPIRE ESTABLISH POINTS OF**  
3 **INTERCONNECTION AT ALL BELL SOUTH ACCESS TANDEMS WHERE**  
4 **E.SPIRE’S NXX’S ARE “HOMED”?**

5

6 **Q. DOES E.SPIRE HAVE ANY COMMENT AS TO MR. MILNER’S**  
7 **TREATMENT OF THIS ISSUE?**

8 A. Mr. Milner points out that e.spire is not required to connect at multiple tandems,  
9 but can connect at one or more places in BellSouth’s network, as e.spire considers  
10 necessary. But this is not the operative question. The question is, if e.spire elects  
11 multiple tandem access, why should e.spire be compelled to establish POIs at  
12 every BellSouth tandem where e.spire’s NXXs are “homed?” Insofar as e.spire is  
13 aware, the point of multiple tandem access is to interconnect at one tandem, and  
14 be referred to all other tandems so that a CLEC can serve all relevant central  
15 offices without having to connect directly to all of them. But if a POI must be  
16 established at every BellSouth tandem where NXXs are homed, this defeats the  
17 purpose of multiple tandem access, and dramatically adds to e.spire’s expense.

18

19 **(ISSUE 29): SHOULD LANGUAGE CONCERNING LOCAL TANDEM**  
20 **INTERCONNECTION BE SIMPLIFIED TO EXCLUDE, AMONG OTHER**  
21 **THINGS, THE REQUIREMENT TO DESIGNATE A “HOME” LOCAL**  
22 **TANDEM FOR EACH ASSIGNED NPA/NXX AND THE REQUIREMENT TO**

1 ESTABLISH POINTS OF INTERCONNECTION TO BELL SOUTH ACCESS  
2 TANDEMS WITHIN THE LATA ON WHICH E.SPIRE HAS NPA/NXXS  
3 "HOMED"?

4

5 Q. DOES E.SPIRE HAVE ANY COMMENTS ON MR. MILNER'S  
6 TESTIMONY WITH REGARD TO THIS ISSUE?

7 A. Yes. Despite Mr. Milner's protestations to the contrary, BellSouth is attempting to  
8 place restrictions on the manner in which e.spire interconnects to BellSouth's  
9 network. e.spire should be free to design its own local calling areas, placing  
10 NPA/NXXs where it chooses, and should not be required to "home them" to a  
11 single local tandem, or establish POIs to an access tandem in a given LATA. This  
12 places undue restrictions on e.spire's network design. BellSouth's testimony is  
13 intended to make it appear that this is the only choice.

14

15 (ISSUE 30): SHOULD CPNI/PLU/PIU BE THE EXCLUSIVE MEANS USED TO  
16 IDENTIFY THE JURISDICTIONAL NATURE OF TRAFFIC UNDER THE  
17 AGREEMENT?

18

19 Q. WHAT RESPONSE DOES E.SPIRE HAVE TO MR. VARNER'S  
20 TESTIMONY ON THIS ISSUE?

21 A. Mr. Varner's testimony concerning the exclusion of ISP bound traffic from local  
22 traffic may no longer be valid in the wake of the DC Circuit Court's vacation of  
23 the FCC's February 26, 1999 Declaratory Ruling. Moreover, BellSouth's

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1 concern, as voiced by Mr. Varner, that e.spire and other CLECs may locate  
2 NPA/NXXs in rate centers other than those established by BellSouth, is just  
3 another attempt to control the design of e.spire's local calling areas. The ability to  
4 sever call rating from call routing is essential to CLECs, as discussed in the  
5 California PUC order referenced in a prior question and attached as "Exhibit 6"  
6 hereto. e.spire's methods of segregating traffic should be entirely sufficient for  
7 any legitimate and necessary use on BellSouth's part.

8  
9 **(ISSUE 31): SHOULD ALL REFERENCES TO BELL SOUTH'S STANDARD**  
10 **PERCENT LOCAL USE REPORTING PLATFORM BE DELETED?**

11  
12 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
13 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
14

15  
16  
17 **(ISSUE 32): SHOULD SPECIFIC LANGUAGE BE INCLUDED PRECLUDING**  
18 **IXCS FROM USING "TRANSIT" ARRANGEMENTS TO ROUTE TRAFFIC TO**  
19 **E.SPIRE?**

20  
21 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
22 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
23  
24

1 **(ISSUE 33): HOW SHOULD THE PARTIES COMPENSATE EACH OTHER**  
2 **FOR INTERCONNECTION OF THEIR RESPECTIVE FRAME RELAY**  
3 **NETWORKS?**

4  
5 **Q. WHAT COMMENTS DO YOU HAVE ON MR. VARNER'S TESTIMONY**  
6 **WITH REGARD TO THIS ISSUE?**

7 A. Mr. Varner's testimony on this issue commences with the bald assertion that  
8 BellSouth has had "discussions with various CLECs" and has concluded, based  
9 on these unidentified conversations, that "frame relay traffic is overwhelmingly  
10 non-local." Varner Testimony at 44. Based on this premise, Mr. Varner states  
11 that it is not necessary to price interconnection trunks for frame relay at TELRIC  
12 if the traffic they carry is non-local, or as he terms it, "negligible." Essentially,  
13 then, BellSouth appears to be determining that it is free to price frame relay  
14 interconnection trunks as it pleases because Mr. Varner has had some discussions  
15 at some unknown point with "various CLECs".

16  
17 **Q. IS BELL SOUTH ENTITLED TO AVOID TELRIC PRICING FOR**  
18 **FRAME RELAY INTERCONNECTION TRUNKS BASED ON ITS**  
19 **UNPROVEN ASSUMPTIONS?**

20 A. No. The question is not whether Mr. Varner has had some vague discussions with  
21 unidentified CLECs: the question is what is actually being carried on these

## Rebuttal Testimony of James C. Falvey

1 trunks. To the extent that local traffic is being carried, BellSouth should be  
2 required to provide these facilities at TELRIC prices.

3  
4 **(ISSUE 34): SHOULD BELLSOUTH'S RATES FOR FRAME RELAY**  
5 **INTERCONNECTION BE ESTABLISHED AT TELRIC?**

6  
7 **Q. HAS BELLSOUTH SATISFACTORILY RESPONDED TO E.SPIRE'S**  
8 **TESTIMONY ON THIS ISSUE?**

9 A. No. e.spire's proposals for compensation are set forth in detail in my direct  
10 testimony. e.spire calls the Commission's attention to the fact that BellSouth has  
11 not addressed these compensation proposals in its testimony.

12  
13 **(ISSUE 35): SHOULD BELLSOUTH BE REQUIRED TO ESTABLISH**  
14 **PRESCRIBED INTERVALS FOR INSTALLATION OF INTERCONNECTION**  
15 **TRUNKS?**

16  
17 *[This issue has been resolved by agreement of the parties, e.spire will not offer any*  
18 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
19

1 **(ISSUE 36): SHOULD THE CHARGES AND THE TERMS AND CONDITIONS**  
2 **SET FORTH IN E.SPIRE'S TARIFF GOVERN THE ESTABLISHMENT OF**  
3 **INTERCONNECTING TRUNK GROUPS BETWEEN BELL SOUTH AND**  
4 **E.SPIRE?**

5  
6 **Q. DO YOU AGREE WITH BELL SOUTH'S CHARACTERIZATION OF**  
7 **THIS ISSUE?**

8 A. No. BellSouth's position, set forth on Page 47 of Mr. Varner's testimony, is  
9 somewhat deceptive. BellSouth appears to be arguing that FCC Rule 51.711  
10 requires e.spire to charge BellSouth the same price for interconnection trunks that  
11 BellSouth charges: the BellSouth TELRIC rates. But this is entirely incorrect.  
12 FCC Rule 51.711 does provide for symmetric pricing, but that is talking about  
13 transport and termination of *traffic*, not the charge for interconnection trunks.  
14 There is nothing in Rule 51.711 that would dictate that e.spire must charge the  
15 same price as BellSouth for interconnection trunks.

16  
17 **Q. WOULD IT MAKE SENSE FOR E.SPIRE TO CHARGE THE SAME**  
18 **RATE AS BELL SOUTH?**

19 A. No, it wouldn't. BellSouth's rates are based on TELRIC cost studies. And those  
20 cost studies relate to BellSouth's own peculiar costs. They have no bearing  
21 whatsoever on e.spire's costs. Furthermore, e.spire is a competitive company that  
22 is not required by applicable law to price at TELRIC. Instead, market forces  
23 determine the prices of interconnection trunks sold by e.spire. BellSouth should

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1 not be able to dictate the price of e.spire's interconnection trunks, any more than  
2 BellSouth should be able to dictate the price of any other service offered by  
3 e.spire to a customer. This would undercut e.spire's ability to compete and  
4 unfairly place execution of part of its business plan in the hands of its chief  
5 competitor.

6  
7 **(ISSUE 37): FOR TWO-WAY TRUNKING, SHOULD THE PARTIES BE**  
8 **COMPENSATED ON A PRO RATA BASIS?**

9  
10 **Q. DO YOU HAVE ANY COMMENTS ON MR. VARNER'S TREATMENT**  
11 **OF THIS ISSUE?**

12 A. Yes. Mr. Varner proposes that two-way trunks be paid for 50/50 by the Parties,  
13 presumably on the basis that if two-way trunks are used, it is because the traffic  
14 flow is roughly balanced. Varner at 48. And that would be the appropriate  
15 outcome if the traffic *were* roughly balanced. Experience has shown, however,  
16 that BellSouth sends much more traffic to e.spire than vice-versa, and BellSouth  
17 should therefore pay its *pro rata* share based on the amount of traffic on the  
18 trunks.

1   **Q.    DOES MR. VARNER PRESENT ANY REASONED EXPLANATION FOR**  
2       **WHY HE THINKS THE TRAFFIC FLOW IS ROUGHLY BALANCED?**

3    A.    No, none whatsoever. This is just an assumption, without any reasoned basis.  
4        Nor has Mr. Varner even attempted to respond to my representation in my direct  
5        testimony that there is a significant imbalance in the traffic flow.

6  
7    **(ISSUE 38): SHOULD E.SPIRE BE PERMITTED THE OPTION OF RUNNING**  
8       **COPPER ENTRANCE FACILITIES TO ITS BELL SOUTH COLLOCATION**  
9       **SPACE IN ADDITION TO FIBER?**

10  
11   **Q.    WHAT COMMENTS DO YOU HAVE ON MR. MILNER'S TESTIMONY**  
12       **CONCERNING THIS ISSUE?**

13   A.    Mr. Milner cites FCC Rule 51.323(d)(3) that clearly makes provision for allowing  
14        copper or coaxial cable to be introduced into an ILEC's entrance facility "if such  
15        interconnection is first approved by the state commission." Milner Testimony at  
16        90-91. He goes so far as to state that e.spire's request "flies in the face" of the  
17        FCC's rule, and claims that e.spire's request is an "attempt to unearth a settled  
18        issue." Milner Testimony at 92. Then Mr. Milner points out that, to his  
19        knowledge, this Commission has not yet given e.spire the specific approval to  
20        utilize copper cable in BellSouth's entrance facilities. However, that is precisely  
21        what this issue consists of. e.spire is asking the Commission to determine that it  
22        may use copper for entrance facilities where appropriate. So it is begging the  
23        question to declare that the Commission has not yet granted its approval.

1   **Q.    BUT WHAT ABOUT MR. MILNER’S ASSERTION THAT ALLOWANCE**  
2       **OF COPPER ENTRANCE FACILITIES WILL EXHAUST THOSE**  
3       **FACILITIES PREMATURELY?**

4   **A.**   This is nothing but speculation. Mr. Milner is assuming that the copper facilities  
5       requested by e.spire will be much larger in diameter than the cables it would  
6       introduce if it used fiber. That is not a foregone conclusion: Mr. Milner has  
7       nothing on which to base this assertion. Moreover, Mr. Milner has not provided  
8       any information concerning the likely exhaustion of entrance facilities, or the  
9       likelihood that any other CLECs would choose copper cables if that were allowed.  
10      Essentially, although Mr. Milner claims that the determination e.spire requests  
11      would “accelerate the exhaustion of entrance facilities at its central offices at an  
12      unacceptable rate,” Milner Testimony at 91, there are no facts to back this up.  
13      BellSouth has not provided any information concerning the current status of its  
14      entrance facilities, or any information concerning the current rate of exhaustion  
15      and how allowance of copper facilities would accelerate that, if at all. He is  
16      asking the Commission to make a determination based on his unfounded assertion  
17      alone.

18  
19   **(ISSUE 39): SHOULD E.SPIRE BE REQUIRED TO PAY A SUBSEQUENT**  
20   **APPLICATION FEE TO BELL SOUTH FOR INSTALLATION OF CO-CARRIER**  
21   **CROSS CONNECTS EVEN WHEN E.SPIRE PAYS A CERTIFIED VENDOR TO**  
22   **ACTUALLY PERFORM THE WORK?**

## Rebuttal Testimony of James C. Falvey

*[This issue has been resolved by agreement of the parties. e.spire will not offer any rebuttal testimony, but reserves the right to do so if the issue is reopened.]*

**(ISSUE 40): SHOULD BELL SOUTH BE REQUIRED TO RESPOND TO ALL E.SPIRE APPLICATIONS FOR PHYSICAL COLLOCATION SPACE WITHIN 45 CALENDAR DAYS OF SUBMISSION?**

**Q. WHAT IS YOUR REACTION TO MR. MILNER'S TESTIMONY ON THIS SUBJECT?**

A. Mr. Milner seems to agree with e.spire's position on everything except (i) the use of business days; and (ii) the turnaround times for orders in excess of 15 submitted at one time. e.spire contends that the use of business days instead of calendar days artificially inflates turnaround times, and is inconsistent with the FCC's March 31, 1999 Collocation Order in the Advanced Services proceeding. Moreover, e.spire continues to believe that BellSouth should be able to respond to orders in excess of 15 submitted at one time within 45 calendar days. Mr. Milner claims on page 95 of his testimony that "resource and manpower concerns" require BellSouth to negotiate turnaround times for orders in excess of 15. This is another way of saying that BellSouth does not intend to devote sufficient staffing to the ordering process to allow processing of multiple orders within a reasonable time. The logjam created by slow turnaround times on collocation applications is

## Rebuttal Testimony of James C. Falvey

1 a significant impediment to competitive entry, and BellSouth should be instructed  
2 to redouble its efforts, and reallocate its workforce, to enable reasonable  
3 turnaround times for CLEC collocation applications.  
4

5 **(ISSUE 41): WHEN BELLSOUTH RESPONDS TO AN E.SPIRE APPLICATION**  
6 **FOR PHYSICAL COLLOCATION BY OFFERING TO PROVIDE LESS SPACE**  
7 **THAN REQUESTED, OR SPACE CONFIGURED DIFFERENTLY THAN**  
8 **REQUESTED, SHOULD SUCH A RESPONSE BE TREATED AS A DENIAL OF**  
9 **THE APPLICATION SUFFICIENT TO ENTITLE E.SPIRE TO CONDUCT A**  
10 **CENTRAL OFFICE TOUR?**  
11

12 **Q. DO YOU HAVE ANY RESPONSE TO MR. MILNER'S CONTENTION**  
13 **THAT BELLSOUTH NEED NOT PROVIDE A TOUR IF IT OFFERS**  
14 **LESS SPACE THAN REQUESTED?**

15 A. Yes. As noted originally in my direct testimony, e.spire believes that any  
16 response to an application for collocation that offers a situation materially  
17 different than the one applied for is an effective denial of the proposal contained  
18 in the application. This is a situation similar to ordering a Lincoln Town Car from  
19 a car rental company, and having them attempt to substitute a Yugo. Although a  
20 Yugo may be a fine vehicle in some instances, *it is not what was ordered*, so the  
21 attempt to substitute it unilaterally is not a "partial" response to the order. It may  
22 be that the Lincoln was ordered because 6 people need to be transported,

## Rebuttal Testimony of James C. Falvey

1 something that would be physically impossible in a Yugo. It is counterintuitive  
2 for BellSouth to claim that its substitution of a materially different proposal is  
3 somehow a satisfaction of a CLEC request for space. It is not. It is just one form  
4 of denial. What e.spire is requesting is the right to verify the space situation when  
5 its request is denied, whether by flat refusal or the “bait and switch” tactic. e.spire  
6 believes that its position, contrary to the contention of Mr. Milner (at page 97), is  
7 entirely consistent with the letter and spirit of the FCC’s rule.

8  
9 **(ISSUE 42): SHOULD THE PRESCRIBED INTERVALS FOR RESPONSE TO**  
10 **COLLOCATION REQUESTS BE SHORTENED FROM THE BELL SOUTH**  
11 **STANDARD PROPOSAL?**

12  
13 **Q. DOES E.SPIRE HAVE ANY COMMENTS ON MR. MILNER’S**  
14 **TESTIMONY WITH REGARD TO THIS ISSUE?**

15 A. Yes. Mr. Milner sets forth a long “shopping list” of all the tasks that must be  
16 accomplished prior to responding to CLEC collocation requests, but there is no  
17 evidence that these tasks cannot be accomplished within more reasonable  
18 intervals. Again, BellSouth’s insistence on use of business days instead of  
19 calendar days artificially inflates the turnaround times in a manner inconsistent  
20 with applicable law – and the intervals proposed by BellSouth are unreasonably  
21 long even if there were stated in calendar days.

22

## Rebuttal Testimony of James C. Falvey

1   **Q.    WHAT ABOUT MR. MILNER’S TESTIMONY THAT THE FCC’S RULE**  
 2       **DOES NOT REQUIRE CALENDAR DAYS?**

3    A.   BellSouth has mis-read the FCC’s rule. If the FCC had intended “business” days,  
 4       it would have used that well-known term. The use of “days” should be read  
 5       without any interpretation to mean, “days.” The FCC did not state that ILECs  
 6       could skip weekends and holidays. Other FCC rules make it very clear when  
 7       weekends and holidays may be skipped, such as the rules for calculation of filing  
 8       dates set forth in 47 C.F.R. Section 1.4.<sup>5</sup> In addition, the term “business day” is  
 9       specifically defined by the FCC in Rule 1.4(e)(2), demonstrating that the FCC is  
 10      well aware of the distinction, and uses “business days” when it means “business  
 11      days,” and simply “days” where “business days” is not intended. BellSouth  
 12      deliberately seeks to misinterpret the Commission’s rule to its advantage in  
 13      instituting anticompetitive service provision delays for CLECs. The Commission  
 14      should find BellSouth’s practices to be unreasonable on their face.

15  
 16   **(ISSUE 43):   SHOULD BELL SOUTH BE PERMITTED TO EXTEND ITS**  
 17   **COLLOCATION INTERVALS SIMPLY BECAUSE E.SPIRE CHANGES ITS**  
 18   **APPLICATION REQUEST?**  
 19

---

<sup>5</sup> Importantly, the FCC’s rules only skip holidays and weekends for filing documents when the total time period for filing is very short, less than 7 days. See 47 C.F.R. Section 1.4(g).

## Rebuttal Testimony of James C. Falvey

1   **Q.   WHAT REACTION DOES E.SPIRE HAVE TO MR. MILNER'S**  
2       **TESTIMONY ON THIS ISSUE?**

3   **A.**   Mr. Milner again seeks to stress just how complicated the ordering process is.  
4       However, this is not news. In some cases, BellSouth effectively has a month and  
5       a half to complete a transaction, far more time than necessary. The problems  
6       related to this issue arise when some very minor change is required to an e.spire  
7       application, and BellSouth starts the entire clock over. There should be some  
8       sense of balance here. As I mentioned in my direct testimony, e.spire is not  
9       attempting to compel BellSouth to do the impossible, or to respond in a critical  
10      timeframe to huge, sweeping, revolutionary changes in e.spire's orders. What  
11      e.spire is worried about is having to go through the entire rigmarole with  
12      BellSouth based on some marginal, nit-picking change that should be  
13      accommodated in 30 seconds instead of 30 *business days*. Astoundingly, Mr.  
14      Milner claims on page 104 of his testimony that if e.spire's changes are so  
15      marginal as to require only a slight, non-time-consuming adjustment, e.spire  
16      should simply refrain from making them so as to avoid the draconian response of  
17      re-starting the clock. This is simply unresponsive to e.spire's valid concern:  
18      e.spire should be able to make small changes where necessary without starting  
19      over from the very beginning.

20

1 **(ISSUE 44): SHOULD THE PRESCRIBED INTERVALS FOR COMPLETION**  
2 **OF PHYSICAL COLLOCATION SPACE BE SHORTENED FROM THE**  
3 **BELLSOUTH STANDARD PROPOSAL?**

4  
5 **Q. WHAT COMMENTS DOES E.SPIRE HAVE TO MR. MILNER'S**  
6 **TESTIMONY IN RESPONSE TO THIS ISSUE?**

7 **A.** Mr. Milner again trots out his shopping list of all of the steps required in  
8 provisioning collocation. But again, simply because a transaction has a lot of  
9 included steps does not mean that it cannot be accomplished in a reasonable  
10 period if it is staffed efficiently. Amazingly, Mr. Milner seems to be arguing that  
11 there is no distinction between the time frame needed for caged and cageless  
12 collocation (Milner Testimony at 106). BellSouth still does not have any  
13 reasoned justification for the length of its proposed intervals, or the use of  
14 business days instead of calendar days. My direct testimony sets forth e.spire's  
15 positions as to appropriate intervals for delivery of collocation arrangements, and  
16 BellSouth has not demonstrated that it cannot meet e.spire's intervals.

17  
18 **(ISSUE 45): SHOULD BELLSOUTH BE PERMITTED TO IMPOSE NON-**  
19 **RECURRING CHARGES ON E.SPIRE WHEN CONVERTING EXISTING**  
20 **VIRTUAL COLLOCATION ARRANGEMENTS TO CAGELESS PHYSICAL**  
21 **COLLOCATION?**

## Rebuttal Testimony of James C. Falvey

1  
2 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
3 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
4

5  
6 **(ISSUE 46): SHOULD BELL SOUTH BE PERMITTED TO PLACE**  
7 **RESTRICTIONS NOT REASONABLY RELATED TO SAFETY CONCERNS ON**  
8 **E.SPIRE'S CONVERSIONS FROM VIRTUAL TO CAGELESS PHYSICAL**  
9 **COLLOCATION ARRANGEMENTS?**

10  
11 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
12 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
13

14  
15  
16 **(ISSUE 47): SHOULD BELL SOUTH PERMIT E.SPIRE TO VIEW THE RATES**  
17 **CHARGED AND FEATURES AVAILABLE TO END USERS IN THE**  
18 **CUSTOMER SERVICE RECORD ("CSR").**

19  
20 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
21 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
22

23  
24 **(ISSUE 48): SHOULD BELL SOUTH BE REQUIRED TO PROVIDE FLOW**  
25 **THROUGH OF ELECTRONIC ORDERS AND PROCESSES AT PARITY?**  
26

## Rebuttal Testimony of James C. Falvey

1  
2 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
3 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
4

5  
6 **(ISSUE 49): SHOULD BELLSOUTH BE AUTHORIZED TO IMPOSE ORDER**  
7 **CANCELLATION CHARGES?**

8  
9 *[This issue has been resolved by agreement of the parties. BellSouth did not offer*  
10 *direct testimony on this issue, and therefore e.spire will not offer any rebuttal.]*  
11

12  
13 **(ISSUE 50): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE READILY**  
14 **AVAILABLE RESULTS OF UNE PRE-TESTING TO E.SPIRE?**

15  
16 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
17 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
18

19  
20 **(ISSUE 51): SHOULD BELLSOUTH BE PERMITTED TO IMPOSE ORDER**  
21 **EXPEDITE SURCHARGES WHEN IT REFUSES TO PAY A LATE**  
22 **INSTALLATION PENALTY FOR THE SAME UNES?**

23  
24 **Q. DO YOU HAVE ANY COMMENTS ON MR. VARNER'S TESTIMONY**  
25 **WITH REGARD TO THIS ISSUE?**

## Rebuttal Testimony of James C. Falvey

1 A. No. e.spire stands on its Direct Testimony concerning this issue.

2

3 **(ISSUE 52): SHOULD BELL SOUTH BE REQUIRED TO ADOPT INTERVALS**  
4 **OF 4 HOURS (ELECTRONIC ORDERS) AND 24 HOURS (MANUAL ORDERS)**  
5 **FOR THE RETURN OF FIRM ORDER COMMITMENTS (“FOCS”)?**

6

7 **Q. WHAT ARE E.SPIRE’S COMMENTS ON MR. PATE’S TESTIMONY ON**  
8 **THIS ISSUE?**

9 A. Mr. Pate’s testimony undermines BellSouth’s position that it cannot return  
10 FOCs/Firm Order Commitments (or, as he terms them, “Firm Order  
11 Confirmations”), because by his own example, BellSouth has demonstrated the  
12 capability to return FOCs within 4 hours if they are thoroughly electronic.  
13 Although there may be certain unusual types of orders that require more time,  
14 BellSouth has essentially proved that it can return FOCs for certain types of  
15 orders within 4 hours. In reality, the response for electronic orders should be far  
16 quicker than 4 hours if there is no human intervention necessary.

17

18 **Q. HAS MR. PATE ADEQUATELY DEMONSTRATED WHY BELL SOUTH**  
19 **REQUIRES 48 HOURS TO RETURN A FOC FOR A MANUAL ORDER?**

20 A. No. He only states that moving to 24 hours for a manual order FOC would be  
21 requiring the manual order to be turned around in the same time as the electronic  
22 order, and claims that it is unreasonable. But 24 hours for the very minimal

## Rebuttal Testimony of James C. Falvey

1 processing of a manual order required in the event it is submitted electronically is  
2 on its face unreasonable, so this is not a sensible guideline for the processing of  
3 manual orders. The time it takes to process a manual order really depends on just  
4 how much human intervention is required, and how long that takes. But Mr. Pate  
5 has not provided any information on that. He simply refers the Commission to  
6 the BellSouth Products and Services Intervals Guide. This is not helpful, because  
7 these are the intervals BellSouth chooses for itself; these intervals are not  
8 designed to assist CLECs in serving their customers expeditiously.

9  
10 **(ISSUE 53): SHOULD BELL SOUTH BE REQUIRED TO ADOPT A**  
11 **PRESCRIBED INTERVAL FOR "REJECT/ERROR" MESSAGES?**

12  
13 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
14 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
15  
16

17 **(ISSUE 54): SHOULD BELL SOUTH BE REQUIRED TO ESTABLISH A**  
18 **SINGLE POINT OF CONTACT FOR E.SPIRE'S ORDERING AND**  
19 **PROVISIONING, I.E., FURNISHING THE NAME, ADDRESS, TELEPHONE**  
20 **NUMBERS AND EMAIL LINKS OF A KNOWLEDGEABLE EMPLOYEE THAT**  
21 **CAN ASSIST E.SPIRE IN ITS ORDERING AND PROVISIONING, ALONG**  
22 **WITH APPROPRIATE FALL-BACK CONTACTS?**  
23

1   **Q.   WHAT IS E.SPIRE'S REACTION TO MR. PATE'S TESTIMONY ON**  
2       **THIS ISSUE?**

3   A.   Mr. Pate contends that e.spire is already getting all the assistance it needs for  
4       doing business with BellSouth. Obviously, if this were truly the case, e.spire  
5       would never have raised this issue in the first place. Nor is this an issue of  
6       training of e.spire's personnel, as Mr. Pate implies, or an attempt by e.spire to  
7       foist off e.spire's cost of doing business on BellSouth. This is just a request to  
8       establish a sensible business practice to enable e.spire to work with BellSouth's  
9       systems more efficiently.

10

11   **Q.   BUT MR. PATE NOTES THAT BELL SOUTH HAS NUMEROUS**  
12       **EMPLOYEES TO ASSIST E.SPIRE. WHY IS THIS NOT SUFFICIENT?**

13   A.   The problem is that the contact with BellSouth is somewhat disjointed, and  
14       disorganized, requiring more time and effort than it should. If there were a single  
15       point of contact with responsibility for e.spire, it would be far easier to expedite  
16       matters and work through problems without running from pillar to post  
17       throughout BellSouth's company. The inefficiency of the current setup  
18       undermines e.spire's ability to serve its customers, and is therefore  
19       anticompetitive.

20

21

## Rebuttal Testimony of James C. Falvey

1   **Q.   WHY DOESN'T BELL SOUTH'S ACCOUNT TEAM PROVIDE**  
2       **ADEQUATE SERVICE TO E.SPIRE?**

3   **A.**   As I mentioned in my Direct Testimony, BellSouth's "account team" simply  
4       cannot perform the day-to-day contact necessary to resolve problems that crop up  
5       between BellSouth and e.spire, and BellSouth is well aware of that. As things  
6       currently go, e.spire is not getting reasonable service from BellSouth: e.spire  
7       must call 3 or 4 different people to get an answer to a given problem, often  
8       explaining the same situation all over again to each person on successive days.  
9       This time-consuming and inefficient set-up serves as a significant impediment to  
10      e.spire's ability to serve its customers.

11  
12   **(ISSUE 55): SHOULD BELL SOUTH BE REQUIRED TO ADOPT THE "TEXAS**  
13   **PLAN" OF PERFORMANCE PENALTIES FOR FAILURE TO PROVIDE**  
14   **SERVICE AT PARITY?**

15  
16   **Q.   DO YOU HAVE ANY COMMENTS WITH REGARD TO MR. VARNER'S**  
17       **TESTIMONY ON THIS ISSUE?**

18   **A.**   No. Mr. Varner did not specifically address this issue in his testimony, although  
19       he made note of it in his response to Issue No. 1. e.spire stands on its Direct  
20       Testimony and its rebuttal to Mr. Varner's response to Issue No. 1, set forth  
21       above.

1 **(ISSUE 56): SHOULD BELLSOUTH BE REQUIRED TO ESTABLISH A NEW**  
2 **PERFORMANCE MEASUREMENT METRIC FOR THE RESALE OF FRAME**  
3 **RELAY?**

4  
5 **Q. DO YOU HAVE ANY COMMENTS CONCERNING MR. VARNER'S**  
6 **TESTIMONY ON THIS ISSUE?**

7 A. Yes, I do. In fact, Mr. Varner's response is indicative of the reasons why *specific*  
8 performance metrics and liquidated damages are so crucial to doing business in  
9 South Carolina. Mr. Varner states that, to the extent e.spire's issue concerns  
10 resale of frame relay, BellSouth "currently provides performance measurement  
11 reports for services that are purchased for resale, including frame relay services,"  
12 so "there should be no dispute." Varner Testimony at 49. But taking a closer  
13 look at the reality of the situation, it is clear that Mr. Varner's response really  
14 does not move the discussion forward at all.

15  
16 **Q. BUT IS MR. VARNER INCORRECT IN STATING THAT BELLSOUTH**  
17 **PROVIDES PERFORMANCE MEASUREMENTS FOR RESOLD**  
18 **SERVICES, INCLUDING FRAME RELAY SERVICES?**

19 A. Probably not. But the "devil is in the details." Let me first note that I am by no  
20 means an expert on this issue. Performance measurements and the enforcement  
21 mechanisms that relate to them are a complex matter; but a careful reading of

## Rebuttal Testimony of James C. Falvey

1 BellSouth's proposal does reveal some useful information that the Commission  
2 should consider and investigate further.

3 This arbitration issue by its terms concerns *provisioning of frame relay*  
4 *interconnections*. Examining the performance measurements exhibit to Mr.  
5 Varner's testimony (Exhibit A), it is clear that while Mr. Varner's assertion that  
6 frame relay provisioning is included in BellSouth's performance measurements  
7 may be true, if it is, it is only *trivially true*. Because of *the way in which it is*  
8 *included*, its inclusion makes no material difference to the provisioning of frame  
9 relay interconnection in South Carolina. To understand what I mean by this, we  
10 have to take a more detailed look at how BellSouth's performance measurements  
11 process in practice.

12 First of all, since this is a provisioning issue, it would presumably be  
13 covered under "PROVISIONING" in BellSouth's Attachment 9 (Exhibit A to Mr.  
14 Varner's testimony). This section appears on page 19 of the attachment. The  
15 relevant "Report/Measurement" is entitled "Mean Held Order Interval &  
16 Distribution Intervals." This means that BellSouth will periodically measure and  
17 report this single parameter concerning its provisioning. BellSouth defines this  
18 "Report/Measurement" by stating that [w]hen delays occur in completing CLEC  
19 orders, the average period that CLEC orders are held for BST reasons, pending a  
20 delayed completion, should be no worse for the CLEC when compared to BST  
21 delayed orders."

## Rebuttal Testimony of James C. Falvey

1           So far, so good. BellSouth's point is that, in principal there should be a  
 2           rough parity between the provisioning service accorded to CLECs and that  
 3           accorded to BellSouth's own customers. e.spire has no argument with this  
 4           general principle: the objective is appropriately stated. But in practice, this  
 5           objective is not achieved with regard to frame relay provisioning, nor does this  
 6           metric do much to encourage appropriate provisioning intervals. To understand  
 7           exactly why, it is essential to focus on three critical elements of BellSouth's  
 8           performance measurements: (i) the derivation of the "Report/Measurement"  
 9           result, (ii) the Report Structure, and (iii) the Level of Disaggregation.

10           The "Report/Measurement" of "Mean Held Order Interval & Distribution  
 11           Intervals" is computed at the close of each reporting period. The "held order  
 12           interval" for a given order is the difference between the committed due date and  
 13           the close of the reporting period. This held order interval is "accumulated by the  
 14           standard groupings," and all of the days accumulated in a given category are  
 15           added together. The "standard service groupings" are as follows (*see* Exhibit A,  
 16           Attachment 9, Appendix A, page 65):

- 17           • UNE Non-Design
- 18           • UNE Design
- 19           • UNE Loops w/LNP
- 20           • Local Interconnection Trunks
- 21           • Resale Residence
- 22           • Resale Business
- 23           • Resale Design
- 24           • BST Trunks
- 25           • BST Residence Retail

## Rebuttal Testimony of James C. Falvey

1                   • BST Business Retail

2           This sum is divided by the number of orders within the same category to produce  
3           the "Mean Held Order Interval."<sup>6</sup> So, if I understand correctly, there will be a  
4           separate "Mean Held Order Interval" for each of the enumerated service  
5           categories.

6           As for "Report Structure," there are three segments to the report:  
7           (i) CLEC Specific, (ii) CLEC Aggregate, and (iii) BST Aggregate. BellSouth  
8           notes that "CLEC Specific" reporting "is by type of held order (facilities,  
9           equipment, other), total number of orders held, and the total and average days.

10          The Held Order Distribution Interval divides the total days held into two  
11          separate groups, (i) orders held more than 15 days, and (ii) orders held more than  
12          90 days. Based on the calculations, it appears that these are reported as  
13          percentages.<sup>7</sup>

14          The "Level of Disaggregation" is divided into two segments: (i) Product  
15          Reporting Levels, and (ii) Geographic Scope. The scope can be state, region or  
16          further disaggregation as required by the Commission. But the key here is the  
17          "Product Reporting Levels." The product reporting levels include:

---

<sup>6</sup> BellSouth sets forth this calculation as:

(Reporting Period Close Date – Committed Order Due Date) / (Number of Orders Pending and Past the Committed Due Date) for all orders pending and past the committed due date.

<sup>7</sup> BellSouth's calculations for these parameters are:

(# of Orders Held for 90 days) / (Total # of Orders Pending But Not Completed) x 100

(# of Orders Held for 15 days) / (Total # of Orders Pending But Not Completed) x 100

## Rebuttal Testimony of James C. Falvey

- POTS-Residence
- POTS-Business
- DESIGN
- PBX
- CENTREX
- ISDN
- UNE 2 Wire Loop with NP (Design and Non-Design)
- UNE 2 Wire Loop without NP (Design and Non-Design)
- UNE Loop Other with NP (Design and Non-Design)
- UNE Loop Other without NP (Design and Non-Design)
- UNE Other (Design and Non-Design)
- Switching (Under Development)
- Local Transport (Under Development)
- Combos (Under development)
- NP (Under development as a separate category)
- Local Interconnection Trunks

As far as can be seen, none of the “Product Levels” reported is related to frame relay. If this is correct, there will be no specific input that can be disaggregated to study frame relay performance.

**Q. WHAT DOES THIS ALL MEAN?**

A. As far as I can determine, it means that, although frame relay provisioning issues may be included somewhere in the performance measurements as Mr. Varner claims, they are “buried” in other categories, so they essentially “disappear” for any meaningful purpose. BellSouth doesn’t really break frame relay issues out as a separate reporting element. As can be seen, the only BellSouth “standard service grouping” that could conceivably contain resold frame relay would be “Resale Business.” And it is unclear whether there is any “Product Reporting Level” that includes frame relay: certainly frame relay products are not set forth

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1 separately as an identifiable category. So it is not clear what, if any, input from  
2 frame relay provisioning events is folded into the service grouping of “Resale  
3 Business.”  
4

5 **Q. HOW DOES THIS AFFECT THE ASSESSMENT OF WHETHER**  
6 **BELLSOUTH’S PERFORMANCE IN PROVISIONING FRAME RELAY**  
7 **IS APPROPRIATE?**

8 A. Insofar as can be determined, it really isn’t possible to get a grip on how  
9 BellSouth is performing with regard to frame relay interconnection provisioning,  
10 because, if it is reported at all, it is “lumped into” more general categories. This  
11 makes it essentially disappear. As an example, if BellSouth provisions 100 frame  
12 relay interconnections in a given reporting period, and 90 of them are over 90  
13 days late, this would mean that 90% of the time BellSouth’s provisioning of frame  
14 relay interconnections for that reporting period are over 90 days late. If this  
15 situation were broken out into an identifiable study category, it would be a  
16 dramatic problem, indeed, and would likely trigger enforcement mechanisms.  
17 But if frame relay interconnection provisioning is only .01% of all “Resale  
18 Business” orders, and assuming for purposes of this example that BellSouth is  
19 generally on-time with the majority of orders in that category, the abysmal frame  
20 relay provisioning performance would be swamped with other, relatively on-time  
21 performance, and it would essentially disappear for purposes of the report. So to  
22 point out, as Mr. Varner does, that frame relay measurements are contained in

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1 performance measurements for resold services doesn't mean that BellSouth is  
2 compelled by that fact to offer quality or timely service for frame relay services.  
3

4 **Q. THEN WHAT DOES E.SPIRE RECOMMEND?**

5 A. e.spire continues to recommend that BellSouth establish *specific* performance  
6 metrics for frame relay interconnection provisioning, breaking them out into  
7 *separate categories* so that the Commission can observe *directly* just what is  
8 going on in that area. Then BellSouth would have at least some incentive to offer  
9 reasonable performance. At present, that's not the case, because BellSouth has  
10 designed its performance measurements to "bury" frame relay provisioning  
11 performance. That is precisely what our issue is about. Unless there is *real*  
12 *oversight*, BellSouth will be able to offer substandard service to its competitors in  
13 this burgeoning field, dominating this service in an anticompetitive manner, and  
14 no one will be the wiser.  
15

16 **(ISSUE 57): SHOULD BELLSOUTH BE REQUIRED TO ESTABLISH A NEW**  
17 **PERFORMANCE METRIC FOR THE PROVISIONING OF EELS?**  
18

19 **Q. WHAT COMMENTS DO YOU HAVE ON MR. VARNER'S TESTIMONY**  
20 **CONCERNING THIS ISSUE?**

21 A. Mr. Varner notes (page 50) that BellSouth is currently "investigating the technical  
22 feasibility" of implementing a new performance measurement for EELs, but that

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1 the volume of activity is so low that it makes no sense to incur the expense to  
2 develop the new metric. Mr. Varner, however, did not provide any information  
3 concerning how low the volume of activity is, how much it costs to develop the  
4 metric, how volumes of EELs may increase over time, or any other “hard”  
5 information that would allow the Commission to make an educated judgment as  
6 to whether it should order BellSouth to implement this new metric. The  
7 provisioning of EELs is a very important thing for CLECs, and it is going to  
8 increase in importance over time. BellSouth’s unwillingness to study and report  
9 its performance in this crucial area is really related to its reluctance to facilitate  
10 the conversion of existing, very lucrative special access arrangements to EELs,  
11 and its need to place every possible impediment, including great inefficiency, in  
12 the way of CLECs seeking to convert these arrangements. The Commission  
13 should re-read BellSouth’s response to e.spire’s issue as to whether the ASR  
14 process could be used to provision EELs. BellSouth’s response was essentially  
15 that it was “developing” a means of provisioning UNE EELs, and that it had not  
16 yet finished, but would let CLECs know when it was ready. In the meantime,  
17 BellSouth noted, it was not required by law to allow CLECs to use the ASR  
18 process. So BellSouth essentially leaves CLECs without reasonably efficient  
19 alternatives to convert special access arrangements to EELs. This is just another  
20 example of BellSouth’s foot-dragging, attempting to hinder EEL conversions.

1 **(ISSUE 58): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE AN**  
2 **ELECTRONIC FEED SUFFICIENT TO ENABLE E.SPIRE TO CONFIRM**  
3 **THAT DIRECTORY LISTINGS OF ITS CUSTOMERS HAVE ACTUALLY**  
4 **BEEN INCLUDED IN THE DATABASES UTILIZED BY BELLSOUTH?**

5  
6 **Q. DO YOU HAVE ANY COMMENTS ON MR. PATE'S TESTIMONY ON**  
7 **THIS ISSUE?**

8 A. Yes. Mr. Pate refused to discuss the portion of this issue that relates to directory  
9 listing feeds that are utilized by BAPCO. Even if e.spire can view directory  
10 assistance information in its customers' CSRs using TAG or LENS, this does not  
11 address the problem of being able to cross-check listing information that is  
12 destined for printed media. e.spire reiterates the importance of that issue: without  
13 being able to check the electronic feeds that are used for this purpose, e.spire is  
14 unable to assure that its customers' interests can be appropriately protected.

15  
16 **(ISSUE 59): SHOULD BELLSOUTH AND BELLSOUTH ADVERTISING &**  
17 **PUBLISHING CORPORATION ("BAPCO") BE REQUIRED TO COORDINATE**  
18 **TO ESTABLISH A PROCESS WHEREBY INP TO LNP CONVERSIONS DO**  
19 **NOT REQUIRE A DIRECTORY LISTINGS CHANGE?**

20  
21 **Q. DO YOU HAVE ANY COMMENTS ON MR. VARNER'S TESTIMONY**  
22 **CONCERNING THIS ISSUE?**

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1 A. Yes. e.spire is pleased to hear that INP-to-LNP conversions are seamlessly  
 2 performed and do not require a directory listing change unless affirmatively  
 3 requested by an e.spire customer. If Mr. Varner is accurate, BellSouth should  
 4 have no difficulty whatsoever in affirmatively committing in the parties'  
 5 agreement that it will coordinate with BAPCO to ensure that this continues to be  
 6 the case. If, as Mr. Varner states, the issue is moot, BellSouth will not be  
 7 inconvenienced in the least by the inclusion of e.spire's requested language in the  
 8 parties' agreement.

9  
 10 **(ISSUE 60): SHOULD BAPCO BE REQUIRED TO PERMIT E.SPIRE TO**  
 11 **REVIEW GALLEY PROOFS OF DIRECTORIES 8 WEEKS AND 2 WEEKS**  
 12 **PRIOR TO PUBLISHING, AND COORDINATE CHANGES TO LISTINGS**  
 13 **BASED ON THOSE PROOFS.**

14  
 15 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
 16 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
 17  
 18

19 **(ISSUE 61): SHOULD BAPCO'S LIABILITY FOR ERRORS OR OMISSIONS**  
 20 **BE LIMITED TO \$1 PER ERROR OR OMISSION?**

21  
 22 *[This issue has been resolved by agreement of the parties. e.spire will not offer any*  
 23 *rebuttal testimony, but reserves the right to do so if the issue is reopened.]*  
 24

1 **(ISSUE 61): SHOULD BAPCO BE REQUIRED TO SHALL DELIVER 100**  
2 **COPIES OF EACH NEW BOOK TO AN E.SPIRE DEDICATED LOCATION?**

3  
4 **Q. DOES E.SPIRE HAVE ANY COMMENTS AS TO BELL SOUTH'S**  
5 **TESTIMONY ON THIS ISSUE?**

6 A. No. e.spire will stand on its Direct Testimony with regard to this issue.

7  
8 **(ISSUE 62): SHOULD BAPCO'S LIABILITY IN E.SPIRE CUSTOMER**  
9 **CONTRACTS AND TARIFFS BE LIMITED?**

10  
11 **Q. WHAT RESPONSE DO YOU HAVE TO MR. VARNER'S TESTIMONY**  
12 **ON THIS ISSUE?**

13 A. Mr. Varner states that, since e.spire can protect itself from its customers by  
14 limiting its own liability in its tariff, and BAPCO does not have that ability, and  
15 BAPCO publishes CLEC listings without charge, it is "just and reasonable" for  
16 BAPCO to require that its liability be limited. But this is not presenting the whole  
17 picture.

18 First of all, BellSouth inconsistently claims that issues involving BAPCO  
19 cannot be arbitrated, but it nevertheless attempts in Attachment 11 to the parties'  
20 agreement to compel e.spire to limit BAPCO's liability. When it is also realized  
21 that (i) BellSouth "farms out" the White Pages printing and publication function  
22 to its affiliate, BAPCO, *despite* the fact that it is required both under federal and

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1 South Carolina law to be responsible for White Pages publication and directory  
 2 listings,<sup>8</sup> (ii) claims that e.spire cannot have the reasonable access it requires to  
 3 ensure that its customers' directory listings are accurate; (iii) seeks to compel  
 4 e.spire to limit its liability (as between BAPCO and e.spire) to \$1.00 per directory  
 5 listing, and (iv) claims that no issues involving BAPCO can be brought before this  
 6 Commission for decision in this arbitration, this adds up to a horse of a different  
 7 color. The overall picture is that BellSouth does not want to be held responsible  
 8 for the essential function of directory listing, despite the requirements of state and  
 9 federal law, and also does not want the CLECs to be able to obtain reasonable  
 10 service for their customers. This adds up to anticompetitive behavior calculated  
 11 to reclaim potential CLEC customers. Once the whole picture is viewed,  
 12 BAPCO's entitlement to have e.spire protect it from its own negligence by  
 13 limiting its liability to e.spire's customers in e.spire's tariff does not seem quite so  
 14 clear-cut. As I stated in my Direct Testimony, BAPCO's best assurance that it  
 15 won't be successfully sued by an e.spire customer is to perform its functions  
 16 appropriately.

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<sup>8</sup> See 1999 CODE OF REGULATIONS OF SOUTH CAROLINA, Chapter 103, Article 6 (Telecommunications Utilities) at 103-631 *et seq.*:

**103-631. Directories.**

Telephone directories shall be published at regular intervals, listing the name, address, and telephone numbers of all customers, except public telephone and telephone service unlisted at customer's request.

1 **(ISSUE 64): WHAT ARE THE APPROPRIATE RATES FOR THE**  
2 **FOLLOWING: SECURITY ACCESS, ASSEMBLY POINT, ADJACENT**  
3 **COLLOCATION, DSLAM COLLOCATION IN THE REMOTE TERMINAL,**  
4 **AND NON-ICB SPACE PREPARATION CHARGES?**

5

6 **Q. WHAT COMMENTS DOES E.SPIRE HAVE CONCERNING THE**  
7 **FOREGOING ISSUE?**

8 A. Issue 64 was recently added to the proceeding to establish rates for new UNEs as  
9 well as certain other rates pertaining to issues raised in this arbitration. As noted  
10 with respect to Issues 8 and 26 above, BellSouth's witness Daonne Caldwell  
11 responded to this issue with voluminous cost studies that e.spire has not had  
12 adequate opportunity to review critically. e.spire would like to reiterate its request  
13 that the Commission review and analyze these cost studies critically prior to  
14 accepting their results.

15

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17

18 A. Yes. However, I reserve the right to modify and supplement my testimony as  
19 required to respond to any material new developments or subsequent BellSouth  
20 actions in this proceeding.